

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action seeking a civil penalty under Sections 301(a) and 309 (b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1319(b) and (d), against Defendant Davisco Foods International, Inc. (d/b/a Jerome Cheese Company) (“Defendant”).

JURISDICTION, AUTHORITY, NOTICE AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. The United States has authority to bring this action on behalf of the Administrator of EPA (“Administrator”) under Section 506 of the CWA, 33 U.S.C. § 1366, and under 28 U.S.C. §§ 516 and 519.

4. Notice of the commencement of this action has been given to the State of Idaho pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

5. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as this is a judicial district within which Defendant is doing business and within which the claims arose.

DEFENDANT

6. Davisco Foods International, Inc. (“Davisco”) is a privately held corporation organized and existing in the State of Minnesota, with headquarters in Le Sueur, Minnesota.

7. Defendant is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. At all relevant times, Defendant owned and operated the cheese-processing facility at 47 West 100 South, Jerome, Idaho (“Facility”) under the name of Jerome Cheese Company. At all relevant times, Defendant maintained full control over the operational decisions at the Facility, including but not limited to the discharges of pollutants from the Facility.

STATUTORY FRAMEWORK

9. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. CWA § 101, 33 U.S.C. § 1251(a).

10. To accomplish this goal, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States except as authorized by, and in compliance with, certain enumerated Sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

11. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator may issue a National Pollutant Discharge Elimination System (“NPDES”) permit, which authorizes the discharge of pollutants into waters of the United States. Section 402 of the CWA, 33 U.S.C. § 1342, directs the Administrator of EPA to impose conditions for NPDES permits, including conditions on data and information collection, reporting, and such other requirements as the Administrator deems appropriate.

12. Violations of monthly average discharge limits in an NPDES permit constitute a violation of the Permit on each day of the month in which the violation occurred.

13. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which a compliance order under Section 309(a) is also possible. Section 309(a)(3) authorizes EPA to issue compliance orders whenever it finds that any person has violated Section 301 of the CWA or any condition or limitation in a permit issued pursuant to Section 402 of the CWA. 33 U.S.C. § 1911(a)(3).

14. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by the Debt Collection Improvement Act of 1996, 28 U.S.C.A. § 2461 note, and 40 C.F.R. Part 19.4, provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or any permit condition or limitation implementing such section in an NPDES permit, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation that occurred between March 15, 2004, and January 12, 2009, and \$37,500 per day for each violation that occurred after January 12, 2009.

GENERAL ALLEGATIONS

15. As part of the operation of the Facility, Defendant generates waste water containing “pollutants,” as that term is defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

16. Defendant applied for and EPA issued Defendant NPDES Permit No. ID-002760-0 (“the Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342. The Permit authorized the discharges of waste water containing pollutants from the Facility subject to certain limitations and conditions and became effective on October 1, 2001.

17. The Permit authorizes discharges within the limits of the permit from the Facility’s Outfall 001 into a ditch known as Lateral 12 that, at least seasonally, conveys

water as further described below. The water in Lateral 12 is part of an irrigation system managed by the North Side Canal Company. The water in Lateral 12 flows through a series of irrigation ditches, which all flow to the Snake River.

18. Outfall 001 is a "point source" as defined at Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. Lateral 12 is a tributary that flows into the Snake River which flows to the Columbia River, which in turn flows to the Pacific Ocean.

20. At all relevant times, Defendant was involved in all significant operational decisions at the Facility, including, but not limited to the discharges to Lateral 12.

21. Part I.A. of the Permit limits the type and quantity of pollutants that Defendant may discharge from the Facility. Specifically, the Permit prohibits the Defendant from discharging any total phosphorus (P^5) from the Facility by limiting the daily maximum and monthly average concentration (Mg/L) and amount (lb/Day) of phosphorus to zero. The Permit also limits the monthly average concentration of total ammonia (N^4) that Defendant can discharge from the Facility to 8.2 mg/L. Defendant exceeded the Permit limits for phosphorus and ammonia during the time period of July of 2006 through August of 2010 as follows:

Permit Limit	Months of Violation	Days of Violation	Time Span
Monthly Avg. Total Ammonia Concentration (8.2 mg/L)	1	31	July 2006
Monthly Avg. Total Ammonia Loading (33.9 lb/Day)	1	30	April 2007
Monthly Avg. Total Phosphorus Loading(0 lb/day)	45	1372	September 2006-August of 2010
Monthly Avg. Total Phosphorus Concentration (0 mg/L)	46	1401	September 2006-August of 2010

Daily Max. Total Phosphorus Loading (0 lb/Day)	N/A	47	September 2006-August of 2010
Daily Max. Total Phosphorus Concentration (0 mg/L)	N/A	46	September 2006-August of 2010
Total Days of Discharge Violations		2927	July of 2006-August of 2010

22. Part I.A.1 of the Permit requires Defendant to sample its wastewater effluent once a month and measure specified amounts and concentrations of pollutants including phosphorus. In September of 2009, Defendant failed to sample its effluent and measure the daily maximum total phosphorus concentration (mg/L), the daily maximum total phosphorus loading amount (0 lb/Day), the monthly average total phosphorous loading amount (lb/day) and the monthly average total phosphorous concentration (mg/l).

23. Part III.G.1 and 2 of the Permit require Defendant to notify EPA by telephone within twenty-four hours of becoming aware of a discharge of pollutants in excess of daily maximum permit limits and in writing within five days of becoming aware of the Permit exceedences discharge. On 61 occasions during the time period of September of 2006 through April of 2009, Defendant exceeded the daily maximum Permit limits but did not comply with either of the reporting requirements.

24. Part I.B.6. of the Permit requires Defendant to prepare and submit to EPA an Annual Water Quality Monitoring Summary Report. Defendant failed to submit the annual reports for 2007 and 2008.

25. Part I.C. of the Permit requires Defendant to maintain a copy of the Quality Assurance Plan ("QAP") for all monitoring onsite. On or about April 2, 2009, Defendant did not have a copy of the QAP for ambient monitoring at the Facility.

26. Part I.A.1. of the Permit requires Defendant to ensure that its QAP contain the approved procedures for monitoring and analysis. The approved procedure for fecal coliform bacteria is that samples be analyzed with six hours of sample collection. As of April 2, 2009, Defendant's QAP directed samples to be analyzed within 48 hours.

CLAIMS FOR RELIEF

FIRST CLAIM

PENALTIES UNDER SECTION 309(d) OF THE CWA FOR VIOLATIONS OF PERMIT CONDITIONS AND LIMITATIONS

27. Paragraphs 1 through 26 are realleged and incorporated by reference as if fully set forth below.

28. Defendant exceeded the Permit daily maximum concentration limit for Phosphorus on 46 days during the time period of September of 2006 through August of 2010, which constitutes 46 days of violation of the Permit

29. Defendant exceeded the Permit daily maximum loading limit in the Permit for Phosphorus on 47 days during the time period of September of 2006 through August of 2010, which constitutes 47 days of violation of the Permit.

30. Defendant exceeded the Permit monthly average concentration limit for phosphorus during 46 months from September of 2006 through August of 2010, which constitutes 1401 days of violation of the Permit.

31. Defendant exceeded the Permit monthly average loading limit for phosphorus during 45 months from September 2006 through August of 2010, which constitutes 1372 days of violation of the Permit.

32. Defendant exceeded the Permit monthly average concentration limit for the pollutant total ammonia in July of 2006, which constitutes 31 days of violation.

33. Defendant exceeded the Permit monthly average loading concentration limit for the pollutant total ammonia in April 2007, which constitutes 30 days of violation.

34. Defendant failed to sample its effluent in September of 2009 and failed to measure the daily maximum total phosphorus concentration (mg/L), the daily maximum total phosphorus loading amount (lb/Day), the monthly average total phosphorous loading amount (lb/day), and the monthly average total phosphorous concentration (mg/l) in violation of the Permit.

35. On 61 occasions during the time period of September of 2006 through April of 2009, Defendant failed to notify EPA within twenty-four hours of noncompliance with the discharge limits in the Permit as required by Part III.G.1 of the Permit.

36. On 61 occasions during the time period of September of 2006 through April of 2009, Defendant failed to provide a written submission within 5 days of noncompliance with the discharge limits in the Permit as required by Part III.G.2 of the Permit.

37. Defendant failed to submit Annual Water Quality Monitoring Summary reports in 2007 and 2008, as required by Part I.B.6 the Permit.

38. Defendant failed to include the correct required test procedures for analysis of fecal coliform bacteria in its Quality Assurance Plan, as required by Part I.A.1 permit.

39. Defendant failed to maintain a copy of the Quality Assurance Plan on site and available upon request, as required by Part I.C. of the Permit.

40. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by the Debt Collection Improvement Act of 1996, 28 U.S.C.A. § 2461 note, and 40 C.F.R. Part 19.4, Defendant is liable for civil penalties in an amount not to exceed \$32,500 per day for each

violation of the Permit that occurred between March 15, 2004 and January 12, 2009, and \$37,500 per day for each violation of the Permit that occurred after January 12, 2009.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, requests that the Court:

- a. Order Defendants to pay to the United States a civil penalty not to exceed \$32,500 per day for each violation of the Permit that occurred between March 15, 2004, and January 12, 2009, and \$37,500 per day for each violation of the Permit that occurred after January 12, 2009;
- b. Award the United States the costs and disbursements of this action; and
- c. Grant the United States such further relief as the Court may deem just and proper.

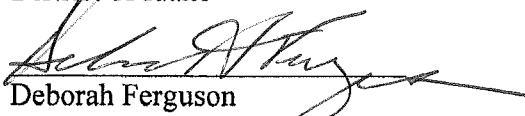


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